

DEPT. OF HYGIENE,	5736
JULY 15 1885	

# THE LAWS OF MASSACHUSETTS

IN RELATION TO THE

## Sale and Inspection of Milk.

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### [CHAPTER 57, PUBLIC STATUTES.]

SECTION 1. The mayor and aldermen of cities shall, and the selectmen of towns may, annually appoint one or more persons to be inspectors of milk for their respective places, who shall be sworn before entering upon the duties of their office. Each inspector shall publish a notice of his appointment for two weeks in a newspaper published in his city or town, or, if no newspaper is published therein, he shall post up such notice in two or more public places in such city or town.

SECTION 2. (*As amended by Chapter 325, Acts of 1885.*) Such inspectors shall keep an office and shall record in books kept for the purpose the names and places of business of all persons engaged in the sale of milk within their city or town. Said inspectors or their assistants may enter all places where milk is stored or kept for sale, and all carriages used for the conveyance of milk, and the said inspectors or their assistants may take samples for analysis from all such places or carriages. The inspectors shall cause the samples of milk so taken to be analyzed or otherwise satisfactorily tested, the results of which analysis or test they shall record and preserve as evidence. The inspectors shall receive such compensation as the mayor and aldermen or selectmen may determine.

SECTION 3. In all cities and in all towns in which there is an inspector of milk, every person who conveys milk in carriages, or otherwise, for the purpose of selling the same in such city or town, shall annually, on the first day of May, or within thirty days thereafter, be licensed by the inspector or inspectors of milk of such city or town to sell milk within the limits thereof, and shall pay to such inspector or inspectors fifty cents each to the use of the city or town. The inspector or inspectors shall pay over monthly to the treasurer of such city or town all sums collected by him or them. Licenses shall be issued only in the names of the owners of carriages or other vehicles, and shall, for the purposes of this chapter, be conclusive evidence of ownership. No license shall be sold, assigned, or transferred. Each license shall record the name, residence, place of business, number of carriages or other vehicles used, the name and residence of every driver or other person engaged in carrying or selling said milk, and the number of the license. Each licensee shall, before engaging in the sale of milk, cause his name, the number of his license, and his place of business to be legibly placed on each outer side of all carriages or vehicles used by him in the conveyance and sale of milk, and he shall report to the inspector or inspectors any change of driver or other person employed by him which may occur during the term of his license. Whoever, without being first licensed under the provisions of this section, sells milk or exposes it for sale from carriages or other vehicles, or has it in his custody or possession with intent so to sell, and whoever violates any of the provisions of this section, shall, for a first offence, be punished by fine of not less than thirty nor more than one hundred dollars; for a second offence, by fine of not less than fifty nor more than three hundred dollars; and for a subsequent offence by fine of fifty dollars and by imprisonment in the house of correction for not less than thirty nor more than sixty days.

SECTION 4. Every person before selling milk or offering it for sale in a store, booth, stand, or market place in a city or in a town in which an inspector or inspectors of milk are appointed, shall register in the books of such inspector or inspectors, and shall pay to him or them fifty cents to the use of such city or town; and whoever neglects so to register shall be punished for each offence by fine not exceeding twenty dollars.

SECTION 5. Whoever, by himself or by his servant or agent, or as the servant or agent of any other person, sells, exchanges or delivers, or has in his custody or possession with intent to sell or exchange, or exposes or offers for sale or exchange, adulterated milk, or milk to which water or any foreign substance has been added, or milk produced from cows fed on the refuse of distilleries, or from sick or diseased cows, shall, for a first offence, be punished by fine of not less than fifty nor more than two hundred dollars; for a second offence, by fine of not less than one hundred nor more than three hundred dollars, or by imprisonment in the house of correction for not less than thirty nor more than sixty days, and, for a subsequent offence, by fine of fifty dollars and by imprisonment in the house of correction for not less than sixty nor more than ninety days.

SECTION 6. Whoever, by himself or by his servant or agent, or as the servant or agent of any other person, sells, exchanges, or delivers, or has in his custody or possession with intent to sell or exchange, or exposes or offers for sale as pure milk, any milk from which the cream or a part thereof has been removed, shall be punished by the penalties provided in the preceding section.

SECTION 7. (*As amended by Chapter 352, Acts of 1885.*) No dealer in milk, and no servant or agent of such a dealer, shall sell, exchange, or deliver, or have in his custody or possession with intent to sell, exchange, or deliver milk from which the cream or any part thereof has been removed, unless in a conspicuous place above the centre upon the outside of every vessel, can, or package from or in which such milk is sold the words "**SKIMMED MILK**" are distinctly marked in uncondensed Gothic letters not less than one inch in length. Whoever violates the provisions of this section shall be punished by the penalties provided in section five.

SECTION 8. (*As amended by Chap. 310, Acts of 1884.*) Any inspector of milk, and any servant or agent of an inspector who wilfully connives at or assists in a violation of the provisions of this chapter, and whoever hinders, obstructs, or in any way interferes with any inspector of milk, or any servant or agent of an inspector in the performance of his duty, shall be punished by fine of not less than one hundred nor more than three hundred dollars, or by imprisonment for not less than thirty nor more than sixty days.

SECTION 9. (*As amended by Chap. 352, Acts of 1885.*) In all prosecutions under this chapter, if the milk is shown upon analysis to contain more than eighty-seven per cent. of watery fluid, or to contain less than thirteen per cent. of milk solids, or to contain less than nine and three-tenths per cent. of milk solids, exclusive of fat, it shall be deemed for the purposes of this chapter to be adulterated.

SECTION 10. It shall be the duty of every inspector to institute a complaint for a violation of any of the provisions of this chapter on the information of any person who lays before him satisfactory evidence by which to sustain such complaint.

SECTION 11. Each inspector shall cause the name and place of business of every person convicted of selling adulterated milk or of having the same in his possession with intent to sell, to be published in two newspapers in the county in which the offence was committed.

SECTION 12. (*Section 8 of the Acts of 1885.*) No person shall sell, exchange or deliver, or have in his custody or possession with intent to sell, exchange or deliver, skimmed milk containing less than nine and three-tenths per cent. of milk solids, exclusive of fat. Whoever violates the provisions of this section shall be punished by the penalties provided in section five of chapter fifty-seven of the Public Statutes.

SECTION 13. (*Section 4 of Chapter 310, Acts of 1884.*) Before commencing the analysis of any sample the person making the same shall reserve a portion, which shall be sealed; and, in case of a complaint against any person, the reserved portion of the sample alleged to be adulterated shall, upon application, be delivered to the defendant or his attorney.

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DECISIONS OF THE SUPREME JUDICIAL COURT OF MASSACHUSETTS  
IN RELATION TO THE LAWS RELATIVE TO THE SALE  
AND INSPECTION OF MILK.

[*Massachusetts Reports*, Vol. 132—p. 11—1882.]

COMMONWEALTH *vs.* MARTIN E. EVANS.

Suffolk, June 27, 1881—Jan. 4, 1882, ENDICOTT and ALLEN, J. J., absent.

A person may be convicted of selling adulterated milk upon a complaint under the St. of 1880, c. 209, § 3, without allegation or proof that he knew it to be adulterated.

The St. of 1880, c. 209, § 7, providing that “in all prosecutions under this act,” for selling adulterated milk, “if the milk shall be shown upon chemical analysis to contain more than eighty-seven per centum of watery fluid, or to contain less than thirteen per centum of milk solids, it shall be deemed for the purposes of this act to be adulterated,” is constitutional.

MORTON, J. This is a complaint under the Statute of 1880, chapter 209. It alleges that the defendant did “unlawfully sell to one Patrick Scannell, of Boston, for the sum of thirty-five cents, a quantity, that is to say eight quarts, of adulterated milk, that is to say a certain quantity, to wit, six quarts and one pint, of milk, to which a certain quantity, that is to say three pints of water, had been added.” The second count charges possession, with intent to sell, milk adulterated in the same manner.

At the trial the defendant asked the Court to rule that the government was bound to allege and prove that the defendant had knowledge that the milk was adulterated. The Court rightly refused this ruling. This has been directly adjudicated in this Commonwealth.

Commonwealth *vs.* Farren, 9 Allen, 489.

Commonwealth *vs.* Nichols, 10 Allen, 199.

Commonwealth *vs.* Winter, 11 Allen, 264.

The defendant asked the Court to rule that the seventh section of chapter 209 of the Statute of 1880 is unconstitutional.

This section provides that “in all prosecutions under this act if the milk shall be shown upon analysis to contain more than eighty-seven per centum of watery fluid, or to contain less than thirteen per centum of milk solids, it shall be deemed to be adulterated.”

The intention of the Legislature, and the practical operation of this section, in connection with the third section, is to provide that it shall be unlawful to sell milk containing less than thirteen per centum of milk solids.

This belongs to the class of police regulations designed to prevent frauds and to protect the health of the people, which it was within the constitutional power of the Legislature to enact.

Bancroft *vs.* Cambridge, 126 Mass., 438, and cases cited.

We have difficulty in seeing, as the case is presented to us in this bill of exceptions, that this question was mentioned or properly involved in the case; the complaint being, not under the seventh section, but under the third section, for selling milk to which water had been added.

Commonwealth *vs.* Luscomb, 130 Mass., 42.

But as this question seems to have been distinctly raised and ruled upon at the trial, it has been considered.

*Exceptions overruled.*

J. D. Thomson—for defendant.

G. Marston—Attorney General—for the Commonwealth.

COMMONWEALTH *vs.* JOHN C. CARTER.

[*Massachusetts Reports*, Vol. 132—p. 14—1882.]

Suffolk, Nov. 21, 1881—Jan. 4, 1882, MORTON, ENDICOTT and ALLEN, J. J., absent.

The St. of 1864, c. 122, § 2, so far as it authorizes inspectors of milk to enter all carriages used in the conveyance of milk, and whenever they have reason to believe any milk found therein is adulterated, to take specimens thereof for the purpose of analyzing or otherwise satisfactorily testing the same, is constitutional.

**FIELD, J.** The only question argued in this case is the constitutionality of Section 2, Chapter 122, Statute of 1864, so far as it authorizes inspectors of milk to "enter any place where milk is stored or kept for sale, and all carriages used in the conveyance of milk; and whenever they have reason to believe any milk found therein is adulterated, they shall take specimens thereof and cause the same to be analyzed or otherwise satisfactorily tested, the result of which they shall record and preserve as evidence."

It is contended that this provision is unconstitutional, because it authorizes the taking of property without consent or compensation; warrants unreasonable searches and seizures; compels one to furnish evidence against himself; and is not within the police-power of the Commonwealth.

An analysis of a specimen of milk offered for sale is an appropriate means of carrying into effect the various provisions of the statutes regulating the sale of milk in this Commonwealth. In the case at bar the can of milk was taken from a carriage used in the conveyance of milk, and it is unnecessary to consider whether the words of the section "place where milk is stored or kept for sale," may or may not include a dwelling-house, and whether, if construed to include dwelling-house, they do not purport to give a power which the Legislature could not give, because the clause authorizing an entry into any place where milk is stored or kept for sale is separable from that which authorizes an entry into all carriages used in the conveyance of milk. Neither is the power granted in violation of the following provision of Art. XII. of the Declaration of Rights, viz.: "No subject shall . . . be compelled to accuse, or furnish evidence against himself." If the seizure is such as is authorized by the Constitution, and a law passed in pursuance thereof, the fact that the thing seized may be used in evidence in a criminal charge against the person from whose possession it is taken, does not render the seizure itself a violation of the Declaration of Rights.

*Commonwealth v. Dana*, 2 Met., 329, 337.

If the statute had required that all milk offered for sale should first be inspected, it would hardly be contended that the trifling injury to property occasioned by taking samples for inspection would be such a taking of private property for public use as to require that compensation be made therefor. Such an injury to property is a necessary incident to the enforcement of reasonable regulations effecting trade in food. Private property is held subject to the exercise of such public rights for the common benefit, and in the case of licensed dealers in merchandise, the injury suffered by inspection is accompanied by advantages which must be regarded as sufficient compensation.

*Bancroft v. Cambridge*, 126 Mass., 438, 441.

Instead of requiring all milk offered for sale to be first inspected the Legislature, for obvious reasons, have permitted licensed dealers to sell milk without inspection; have imposed penalties for selling adulterated milk; have defined what shall be deemed adulterated milk; and have provided that when the inspector of milk has reason to believe that any milk has been adulterated, he may take specimens thereof, in order that, by analysis, or otherwise, he may determine whether the milk has been adulterated. Such a seizure of milk for the purpose of examination is a reasonable method of inspection, and does not require a warrant. It is a supervision, under the laws, by a public officer, of a trade which concerns the public health, and is within the police power of the Commonwealth.

*Commonwealth v. Ducey*, 126 Mass., 269.

*Jones v. Root*, 6 Gray, 435.

There is nothing in this case which requires us to determine the rights of the defendant, if the inspector had attempted to take a larger quantity of milk for inspection than was reasonably necessary for the performance of his duties. We have not found it necessary to consider whether the defendant, by voluntarily accepting a license to sell milk, has not assented to the conditions and regulations which the Legislature has seen fit to impose upon the exercise of the trade licensed.

*Pitkins v. Springfield*, 112 Mass., 509.

*Bertholf v. O'Reilly*, 74 N. Y., 509, 517.

*Exceptions overruled.*

*J. D. Thomson* — for defendant.

*C. H. Barrows*, Assistant Attorney General

(*G. Marston*, Attorney General, with him) — for the Commonwealth.